

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

B.P.J., by her next friend and mother, HEATHER JACKSON,

*Plaintiff,*

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, HARRISON COUNTY BOARD OF EDUCATION, WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION, W. CLAYTON BURCH in his official capacity as State Superintendent, DORA STUTLER in her official capacity as Harrison County Superintendent, and THE STATE OF WEST VIRGINIA,

*Defendants,*

and

LAINY ARMISTEAD,

*Defendant-Intervenor.*

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**JOINT MOTION REQUESTING CONTINUANCE OF TRIAL DATE  
AND ASSOCIATED PRETRIAL DATES**

Plaintiff B.P.J., by and through her next friend and mother, Heather Jackson, Defendant the State of West Virginia, and Defendant-Intervenor Lainey Armistead (collectively, the “Moving Parties”), by counsel, respectfully request that the Court adjourn the current trial date and pretrial schedule, including the submission of the Integrated Pretrial Order currently due on December 19, 2022, and defer setting new deadlines and a trial date until after the Court rules on the pending motions that directly implicate the scope of trial.<sup>1</sup> Alternatively, the Moving Parties request that

---

<sup>1</sup> Dkt. Nos. 276-293, 303-304, 306-329, 353-356, 383-418, 475, 477, 480, 485, 500, 505-506 “Pending Motions,” which include Motions for Summary Judgment filed by all parties, *Daubert* Motions, Motions *in Limine*, Plaintiff’s

the Court extend the deadline for submitting the Integrated Pretrial Order until 10 days after the resolution of the Pending Motions. Defendants other than the State and Defendant-Intervenor oppose adjournment of the trial date and other current deadlines, but join the Moving Parties' alternative request for a continuance of the deadline for submitting the Integrated Pretrial Order.

Trial was previously scheduled for July 26, 2022, but the Court adjourned that date last Summer, before the parties submitted the Integrated Pretrial Order, following the parties' submission of Summary Judgment, *Daubert* Motions, and Motions in Limine. Trial is now scheduled for January 31, 2023 (Dkt. No. 419). The first pre-trial deadline is the Integrated Pretrial Order due on December 19, 2022 (Dkt. No. 448).

Resolution of the Motions for Summary Judgment could be dispositive, resolving which issues are material and which facts are genuinely disputed. In addition, resolution of the *Daubert* Motions, Motions in *Limine*, Plaintiff's Motion to Reconsider the Grant of Lainey Armistead's Permissive Intervention, and additional motions filed by the parties will also significantly impact the scope of trial and which parties remain in the case. Accordingly, the Moving Parties respectfully submit that economy and efficiency will be advanced by allowing the parties to have the benefit of the Court's rulings on the Pending Motions before preparing and submitting their pre-trial filings and preparing for trial.

Moreover, a continuance would avoid the imposition of significant, potentially unnecessary expenses and burdens on the litigants, their attorneys, and expert witnesses. Specifically, having the benefit of this Court's ruling on the Pending Motions prior to the parties completing their trial preparation and plans would prevent key witnesses from having to commit to travel and the resulting disruption to their school and business schedules before knowing

---

Motion to Reconsider the Grant of Lainey Armistead's Permissive Intervention, and additional motions filed by the parties.

whether those witnesses will need to be present at trial. In contrast, if the current trial date and associated pretrial deadlines are not adjourned, the parties will be required to continue preparing for a trial that may be substantially altered in light of the Court's rulings on the Pending Motions.

Although the Moving Parties respectfully submit that all pending deadlines should be adjourned, in the alternative they request that the deadline for submitting the Integrated Pretrial Order be continued until 10 days after the resolution of the Pending Motions. All parties join in this alternative request, given the number of issues upon which the parties will need to confer absent further clarity from resolution of the Pending Motions; and additional discussions by the parties will facilitate submission of a more focused Pretrial Order, which in turn will serve the interests of judicial economy.

The motion is made for good cause and not for the purpose of undue delay. Therefore, the Moving Parties respectfully request the Court continue the trial and all trial-related deadlines accordingly.

Dated: December 14, 2022

Respectfully Submitted,  
/s/ Nick Ward

Joshua Block\*  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
125 Broad St.  
New York, NY 10004  
Phone: (212) 549-2569  
jblock@aclu.org

Nick Ward (Bar No. 13703)  
Aubrey Sparks (Bar No. 13469)  
AMERICAN CIVIL LIBERTIES UNION OF  
WEST VIRGINIA FOUNDATION  
P.O. Box 3952  
Charleston, WV 25339-3952  
Phone: (914) 393-4614  
nward@acluwv.org

Avatara Smith-Carrington\*  
LAMBDA LEGAL  
1776 K Street, N.W., 8<sup>th</sup> Fl.  
Washington, DC 20006-2304  
Phone: (202) 804-6245  
asmithcarrington@lambdalegal.org

Kathleen Hartnett\*  
Julie Veroff\*  
Zoë Helstrom\*  
COOLEY LLP  
3 Embarcadero Center, 20th Floor  
San Francisco, CA 94111  
Phone: (415) 693-2000  
khartnett@cooley.com

Carl Charles\*  
Tara Borelli\*

LAMBDA LEGAL  
158 West Ponce De Leon Ave., Ste. 105  
Decatur, GA 30030  
Phone: (404) 897-1880  
[ccharles@lambdalegal.org](mailto:ccharles@lambdalegal.org)  
[tborelli@lambdalegal.org](mailto:tborelli@lambdalegal.org)

Sruti Swaminathan\*  
LAMBDA LEGAL  
120 Wall Street, 19th Floor  
New York, NY 10005  
Phone: (212) 809-8585  
[sswaminathan@lambdalegal.org](mailto:sswaminathan@lambdalegal.org)

Andrew Barr\*  
COOLEY LLP  
1144 15th St. Suite 2300  
Denver, CO 80202-5686  
Phone: (720) 566-4000  
[abarr@cooley.com](mailto:abarr@cooley.com)

[jveroff@cooley.com](mailto:jveroff@cooley.com)  
[zhelstrom@cooley.com](mailto:zhelstrom@cooley.com)

Katelyn Kang\*  
COOLEY LLP  
55 Hudson Yards  
New York, NY 10001-2157  
Phone: (212) 479-6000  
[kkang@cooley.com](mailto:kkang@cooley.com)

Elizabeth Reinhardt\*  
COOLEY LLP  
500 Boylston Street, 14th Floor  
Boston, MA 02116-3736  
Phone: (617) 937-2305  
[ereinhardt@cooley.com](mailto:ereinhardt@cooley.com)

*\*Visiting Attorneys*

*Attorneys for Plaintiff*

Agreed to by counsel:

/s/ Curtis R. A. Capehart (per consent)  
Curtis R. A. Capehart  
State Capitol Complex Building 1  
Room E-26  
Charleston, WV 25305-0220  
[Curtis.R.A.Capehart@wvago.gov](mailto:Curtis.R.A.Capehart@wvago.gov)

*Counsel for Defendant, the State of West Virginia*

/s/ Philip Sechler (per consent)  
Philip Sechler\*  
Alliance Defending Freedom  
44180 Riverside Pkwy  
Lansdowne, VA 20176  
[psechler@adflegal.org](mailto:psechler@adflegal.org)

*\*Visiting Attorneys*

*Counsel for Defendant-Intervenor,  
Lainey Armistead*

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

B.P.J. by her next friend and mother, HEATHER JACKSON,

*Plaintiff,*

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, HARRISON COUNTY BOARD OF EDUCATION, WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION, W. CLAYTON BURCH in his official capacity as State Superintendent, DORA STUTLER in her official capacity as Harrison County Superintendent, and THE STATE OF WEST VIRGINIA,

*Defendants,*

and

LAINY ARMISTEAD,

*Defendant-Intervenor.*

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**CERTIFICATE OF SERVICE**

I, Nick Ward, do hereby certify that on this 14th day of December, 2022, I electronically filed a true and exact copy of the *Joint Motion Requesting Continuance of Trial Date and Associated Pretrial Dates* with the Clerk of Court and all parties using the CM/ECF System.

/s/ Nick Ward

Nick Ward

West Virginia Bar No. 13703